

CHARLESTONE STONE PRODUCTS, INC.

IBLA 77-268

Decided August 30, 1977

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting an application for a temporary deferment of annual assessment work.

Affirmed.

1. Mining Claims: Generally--Mining Claims: Assessment Work

A petition for deferment of annual assessment work will not be granted where a claimant alleges only that the claims in question are the subject of litigation and that it would be unwise to engage in any development until a resolution of that litigation is reached.

APPEARANCES: W. C. Lamoreaux, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision dated March 10, 1977, the Nevada State Office, Bureau of Land Management (BLM), rejected an application for deferment of assessment work which appellant Charlestone Stone Products, Inc., had submitted in connection with a group of 23 placer claims which had been the subject of a contest decision and subsequent appeal to the Federal courts. The State Office, in rejecting the application, held that: "The litigation described in the application does not deny or impede access to the claim. Thus, the application does not relate conditions under which deferment may be granted."

Charlestone argues on appeal that the Act of June 21, 1949, 30 U.S.C. § 28b-e (1970), "expressly grants deferment where the claims are in litigation." This assertion is mistaken for the statute in question is phrased in broadly permissive, discretionary terms and provides that annual assessment work,

may be deferred by the Secretary of the Interior as to any mining claim or group of claims in the United States upon the submission by the claimant of evidence satisfactory to the Secretary that such mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof. [Emphasis added].

The major policy goal implicit in the language of this statute is the protection of claimants whose rights of access to their claims have been impeded or denied. The relief provisions of the statute are intended to be triggered by considerations of relative necessity, not inconvenience or ordinary business risk. The case before us presents considerations which fall into the latter category especially since appellant prevailed in its suit at the Federal District Court level and, subsequent to the filing of the appeal before us, had its rights vindicated in the United States Court of Appeals for the Ninth Circuit. <sup>1/</sup> This legal dispute, even if ultimately prolonged by a grant of certiorari by the United States Supreme Court, does not constitute a "legal impediment" within the meaning of 30 U.S.C. § 28b-c (1970) and the petition for deferment of assessment work is properly denied.

[1] In Portland General Electric Company, 29 IBLA 165 (1977), we held that a possible or threatened trespass action by BLM did not constitute a legal impediment which affected appellant's right to enter upon the surface of the claims. As we stated in that case: "the deferment statute is designed to grant relief where access to the claims is interdicted. In the case at bar, there had been no preclusion of access to the mining claims." See also James R. Eck, 6 IBLA 263 (1972), Richard L. Seltzer, 8 IBLA 105 (1972). In the case before us, there has been no preclusion of access and, indeed, none is alleged. Reduced to its essentials, appellant's argument is merely that the pendency of litigation concerning its claims creates a risk that any assessment work invested in the claims may be lost by virtue of an unfavorable court decision. This argument is clearly insufficient to support a petition for deferment of assessment work and therefore the decision of the Nevada State Office is affirmed. Portland General Electric Company, *supra*.

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<sup>1/</sup> Charlestone Stone Products Company, Inc., v. Cecil D. Andrus, No. 75-1532 (9th Cir., May 12, 1977).

We observe also that Charlestone has been granted deferments for the assessment years commencing September 1, 1973, September 1, 1974, and September 1, 1975. 30 U.S.C. § 28c (1970), provides that deferment may be granted for an initial period not to exceed 1 year and may be renewed for a further period of 1 year, if justifiable. See also 43 CFR 3852.4. In light of the period of deferment heretofore granted and extended to Charlestone, there appears to be no statutory authority to extend the deferment period even if it were otherwise justifiable.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Martin Ritvo  
Administrative Judge

